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OFFICE OF PETITIONS

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In re Application of
Brain et al.
Application No. 10/009,009
Patent No. 6,958,331
Filed: December 20, 2001
Attorney Docket No 4-30972A

DECISION GRANTING PETITION

This decision is in response to Applicants' "PETITION UNDER 37 CFR 1.705(D) FOR PATENT TERM ADJUSTMENT" filed on December 21, 2005 requesting that the Patent Term Adjustment be adjusted from a determination of 210 days to a determination of three hundred and thirty (330) days.

Applicants' petition is **GRANTED**. The Office will *sua sponte* issue a certificate of correction reflecting an adjustment of 330 days rather than the 210 day amount printed on the front of the patent. The Office will also adjust the PTA calculation reflected in PAIR to reflect this decision.

Applicants argue that the Office erred in asserting an applicant delay of one hundred and twenty (120) days for the response to the USPTO's telephonic call requesting that applicants submit a copy of two pages of the specification that had been previously filed. Applicants assert that the purpose of the paper submission was a response to a telephonic request from the USPTO to provide a legible copy of what had been submitted previously. Accordingly, applicants assert that the Office erred in assessing a delay of 120 days for the specification submission.

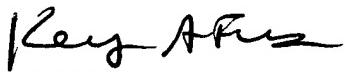
Applicants' argument are deemed persuasive. The USPTO notes that applicants were merely filing a courtesy copy of what had previously been submitted prior to the mailing of the notice of allowance. Accordingly, the submission of the two pages of the specification shall not be deemed to be a failure to engage in reasonable efforts to conclude prosecution of the application pursuant to 37 CFR 1.704(c)(10). Overall, the Office engage in reasonable efforts to conclude prosecution of the application by a period of three hundred and eighty-nine (389) days under 37 CFR 1.702(a)(1) and (a)(4). Applicants' delayed fifty-nine (59) days under 37 CFR 1.704(b). Applicant did not fail to engage under 1.704(c)(10). Overall, the correct amount of PTA at the time of the issuance of the application is 330 (389-59=330) days.

After review of this decision, this application will be forwarded to the certificate of correction branch for a prompt issuance of a certificate of correction.

Application No. 10/009,009

The Office acknowledges the receipt of \$200.00 for the application for patent term adjustment (petition). No additional fees are required by the Office.

Any questions concerning the issuance of this patent should be directed to Kery A. Fries, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy at 571-272-7757



Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: Adjusted Pair Calculation
Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 6,958,331 B1
DATED : Octo. 25, 2005
INVENTOR(S) : Brain et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (210) days

Delete the phrase "by 210 days" and insert – by 330 days--